

## REMARKS

The Examiner has required restriction between Claims 1-5 (Group I), drawn to a method of transporting and installing a modular milking parlor; Claims 6-10 (Group II), drawn to a wheeled carriage, and Claims 11-17 (Group III), drawn to a modular milking parlor. Applicant has provisionally elected Claims 11-17 for initial examination, but submits that the claims to the modular milking parlor are directly related to and part of the same invention as the wheeled carriage apparatus and the method for using the modular milking parlor. For this reason Applicant believes all three groups of claims should be examined together.

The Commissioner may require restriction if two or more independent and distinct inventions are claimed in one application (35 U.S.C. §121). In the present case, although the claimed subject matter may be classified in different classes, the inventions are not independent or distinct. As a result, the Applicant respectfully traverses the restriction requirement.

In the Office Action, the Examiner states that Groups III and II are related as combination and subcombination and that

the combination as claimed does not require the particulars of the subcombination as claimed because the combination requires a modular milking parlor frame comprised of a plurality of milking stations and does not require a plurality of caster wheels as in the subcombination.

The combination of Claim 11 (Group III), however, includes the subcombination of Claim 6 (Group II), because “a plurality of caster wheels” as disclosed in Claim 6 can be included in the “plurality of wheeled carriages” included in Claim 11. Therefore, the restriction requirement is improper as between Groups III and II.

In the Office Action, the Examiner states that Groups III and I are related as product and process of use and that “the product can be used in a materially different process in that the modular milking parlor can be transported via fork lift and flat bed truck and the parlor can be secured with bolts and screws instead of concrete.” The method of Claim 1 (Group I) includes

the elements of the apparatus of Claim 11 (Group III). Specifically, the method of Claim 1 includes "providing a modular milking parlor," the product of Claim 11. Therefore, the restriction requirement is improper as between Groups III and I.

In the Office Action, the Examiner states that Groups II and I are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together. The method of Claim 1 (Group I), however, includes "attaching wheeled carriages." Claim 6 (Group II) discloses "a wheeled carriage." Thus, Groups II and I are related and disclosed as capable of use together. Therefore, the restriction requirement is improper as between Groups II and I.

#### CONCLUSION

For the foregoing reasons, it is respectfully submitted that Groups I, II, and III are closely related and that the required reasons for insisting upon restriction of the claims has not been properly established. Thus, it is respectfully requested that the restriction requirement between Groups I, II, and III be withdrawn and that pending claims 1-17 be examined together and in full.

Respectfully submitted,

Date March 31, 2004

By 

FOLEY & LARDNER LLP

Customer Number: 23524

Telephone: (608) 258-4292

Facsimile: (608) 258-4258

Paul S. Hunter

Attorney for Applicant

Registration No. 44,787